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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Friends World Committee for Consultation, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 February 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The Right to Conscientious Objection to Military Service

Friends World Committee for Consultation (Quakers) would like to draw the Human Rights Council's attention to the developments in regard to the right to conscientious objection to military service since Human Rights Council resolution 24/17 (A/HRC/24/17) of 27 September 2013. As stated in this resolution the right to conscientious objection to military service is protected under the right to freedom of thought conscience and religion.

International Protection: UN High Commissioner for Refugees (UNHCR) Guidelines on International Protection No. 10: on claims to refugee status related to military service[1]

These guidelines replace UNHCR's 1991 position on certain types of draft evasion and provide legal interpretive guidance to aid States in the assessment of claims for refugee status from those fleeing persecution resulting from their conscientious objection to military service.

The Guidelines recognize that conscientious objectors are not a homogenous group, covering a range of bases for objection including religious objection and political objection. The Guidelines are also clear that protection is not limited to total objectors; there should be protection for partial or selective objectors and for those who volunteered or initially agreed to participate in military service and for reservists. The Guidelines state that "States can legitimately require that citizens perform military or alternative service", however, any such service must be "compatible with the reasons for the conscientious objection" as well as of a non-combatant or civilian character, in the public interest and not punitive. Because these are refugee status determination guidelines they look at what should be considered as persecution resulting from conscientious objection to military service. In addition to the most obvious resultant rights violations such as imprisonment and other punishments the guidelines are clear that other impacts may amount to persecution either cumulatively or in and of themselves. Discrimination and other rights violations experienced by conscientious objectors are explored in our paper *Conscientious objectors to military service: Punishment and discriminatory treatment*[2] and in our written statement to the 25th Session of the Human Rights Council.[3]

Right to liberty: Human Rights Committee Jurisprudence

In its most recent jurisprudence on this issue the Human Rights Committee reiterated its well established position that States' lack of recognition of conscientious objection is a violation of Article 18 of the International Covenant on Civil and Political Rights' protection of freedom of thought conscience and religion.[4] For the first time the Committee also found that the incarceration of conscientious objectors because of their refusal to perform military service qualifies as arbitrary deprivation of liberty and violates Article 9:

Just as detention as punishment for the legitimate exercise of the right to freedom of expression, as guaranteed by article 19 of the Covenant is arbitrary, so is detention as punishment for legitimate exercise of freedom of religion and conscience, as guaranteed by article 18 of the Covenant.[5]

Lack of Domestic Provision: Universal Periodic Review (UPR) Recommendations

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[1] UN High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 10: Claims to Refugee Status related to Military Service within the context of Article 1A (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees, 3 December 2013, HCR/GIP/13/10/Corr. 1

[2] Emily Graham *Conscientious objectors to military service: Punishment and discriminatory treatment* (Quaker United Nations Office, 2014)

[3] Written statement submitted by Friends World Committee for Consultation, a non-governmental organization in general consultative status: Conscientious objection to military service, A/HRC/25/NGO/32 of 21 February 2014

[4] *Young-kwan Kim et al v Republic of Korea* (CCPR/C/112/D/2179/2012 of 14 January 2015)

[5] *Young-kwan Kim et al v Republic of Korea* (CCPR/C/112/D/2179/2012 of 14 January 2015), para. 7.5

During the review of Turkey in the UPR three recommendations were made to Turkey to recognize conscientious objection in law and practice.[6] All three recommendations were rejected without further consideration despite repeated European Court of Human Rights judgments requiring this of Turkey[7] and Human Rights Committee concluding observations.[8] In further violation of the International Covenant on Civil and Political Rights and the European Convention on Human Rights the Sivas Military Court in Turkey sentenced conscientious objector Mehmet Tarhan to a further 15 months in prison on 10 February 2015.

We call on Turkey to reconsider its rejection of the UPR recommendations on conscientious objection.

National Legal Protection: Colombian Constitutional Court

We welcome the recent decision of the Colombian Constitutional Court which ruled again that the right of conscientious objection to military service must be recognized and ordered the National Recruitment Office to:

- allow for applications for conscientious objection and resolve all applications within 15 days
- publish information outlining the grounds for exemption or deferral of military service and their right to conscientious objection to military service
- end arbitrary detention resulting from "batidas" (recruitment raids)

The Constitutional Court clearly states that there is a right to claim conscientious objection for serving military personnel. The Court has asked the army to report on implementation within six months.
We call on Colombia to comply promptly with this ruling.

New Publication

Developments in the international standards are expanded in our updated publication *International Standards on Conscientious Objection to Military Service*.[9]

Recommendations

FWCC (Quakers) calls on the UN Human Rights Council to:

i. continue to pay attention to the protection and promotion of the right to conscientious objection to military service;
ii. specifically include the promotion and protection of the right of conscientious objectors to military service in relation to relevant thematic resolutions; and
iii. urge States to
    a. fully implement the right of conscientious objection to military service in law and practice;
    b. end the prosecution and imprisonment of all conscientious objectors;
    c. immediately release imprisoned conscientious objectors and clear their criminal records;
    d. provide conscientious objectors with the necessary documentation to interact with the State and enable full access to education and employment;
    e. prohibit discrimination against conscientious objectors, in law and practice, in relation to their terms or conditions of service, and all any civil, political, economic, social or cultural rights; and to
    f. follow the UNHCR Guidelines when assessing claims for refugee status related to military service.

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[6] Human Rights Council, Draft report of the Working Group on the Universal Periodic Review: Turkey, A/HRC/WG.6/21/L.12 of 29 January 2015, paras. 8.12-8.14

[7] Osman Murat Ülke v. Turkey, 39437/98, 24/01/2006; Yunus Erçep v. Turkey, 43965/04, 22/11/2011; Feti Demirtaş v. Turkey, 5260/07, 17/01/2012; Halil Savda v. Turkey, 42730/05, 12/06/2012; Mehmet Tarhan v. Turkey, 9078/06, 17/07/2012

[8] CCPR/C/TUR/CO/1, 2nd November 2012, Para 23

[9] See www.quno.org